

Amendment dated January 20, 2004

Reply to Final Office Action dated November 18, 2003

**REMARKS**

Claims 1-11, 13-33, 35-44, 48 and 50 are pending in this application. Of these, claims 30-33, 35-37, 39, 41-44 and 50 have been withdrawn from consideration. Claims 1-10, 12, 13, 16, 17 and 20-26 have been allowed, and claims 11, 14-15, 18-19, 27-29, 34, 38, 40 and 48 have been rejected. Applicants thank the Examiner for the indication of allowable subject matter.

By this amendment, Applicants have amended claims 11 and 13, and have cancelled claims 12 and 34. Claim 11 has been amended to incorporate the subject matter of dependent claim 12, which is now cancelled. Claim 13, which had depended from claim 12, has been amended to depend from amended independent claim 11. Reconsideration of the above-identified application in view of the above amendments and the following remarks is respectfully requested

1. Claims 11, 14, 15, 18, 27 and 28 have been rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 5,279,382 to Iwata ("Iwata") in view of U.S. Patent No. 5,353,662 to Vaughters ("Vaughters").

Independent claim 11 has been amended to incorporate the allowable subject matter of former claim 12, which is now cancelled. Accordingly, Independent claim 11 now defines patentable subject matter over Iwata and Vaughters, alone or in combination. Claims 14, 15, 18, 27 and 28 depend from independent claim 11, and therefore also define patentable subject matter over Iwata and Vaughters, alone or in combination.

Withdrawal of the rejection applied to claims 11, 14, 15, 18, 27 and 28 under 35

Amendment dated January 20, 2004

Reply to Final Office Action dated November 18, 2003

U.S.C. §103(a) as being unpatentable over Iwata in view of Vaughters, is respectfully requested.

2. Claims 19 and 29 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Iwata in view of Vaughters, further in view of U.S. Patent No. 5,312,169 to Buschmann ("Buschmann"). Applicants respectfully traverse this rejection.

As set forth above, independent claim 11 has been amended to incorporate the allowable subject matter of claim 12. As such, independent claim 11 now defines patentable subject matter over Iwata, Vaughters and Buschmann, alone or in combination. Claims 19 and 29 depend from independent claim 11, and therefore also define patentable subject matter over Iwata, Vaughters and Buschmann, alone or in combination.

Withdrawal of the rejection applied to claims 19 and 29 under 35 U.S.C. §103(a) as being unpatentable over Iwata in view of Vaughters and Buschmann, is respectfully requested.

3. Claims 34, 38, 40 and 48 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Shimanaka in view of Buschmann. Applicants respectfully traverse this rejection. As mentioned above, claim 34 is now cancelled.

Independent claim 38 recites, *inter alia*, an industrial vehicle in which a controller "decreases an engaging force of one of the clutches that corresponds to the moving direction of the vehicle for decreasing the power transmitted to the driving wheel by controlling the corresponding clutch valve."

Independent claim 48 recites, *inter alia*, an industrial vehicle in which a controller "decreases the engaging force of one of the clutches that corresponds to the moving direction of

Amendment dated January 20, 2004

Reply to Final Office Action dated November 18, 2003

the vehicle for decreasing the power transmitted to the driving wheels.”

In contrast with claims 38 and 48, Shimanaka describes a transmission line pressure setup for an vehicle having a traction control system. In the system described by Shimanaka, a change in line pressure to a transmission occurs based on the opening degree of two throttles. Shimanaka describes, though not in great detail, that the opening degree of one throttle is related to a signal received from a traction control system. See Shimanaka at column 6, lines 60-63. Shimanaka does not teach or suggest the use of a clutch as claimed in independent claims 34 and 38.

Also in contrast with claims 38 and 48, Buschmann describes a circuit configuration for a vehicle with an anti-lock braking system and/ or a traction control system. In Buschmann, during acceleration, the traction control system functions by selectively braking wheels when slipping occurs. Buschmann does not teach or suggest the use of a clutch for any purpose, much less as claimed in independent claims 34 and 38.

In sum, neither Shimanaka nor Buschmann, alone or in combination, teach or suggest an industrial vehicle in which a controller “decreases an engaging force of one of the clutches that corresponds to the moving direction of the vehicle for decreasing the power transmitted to the driving wheel by controlling the corresponding clutch valve,” as recited in independent claim 38 or an industrial vehicle in which a controller “decreases the engaging force of one of the clutches that corresponds to the moving direction of the vehicle for decreasing the power transmitted to the driving wheels,” as recited in independent claim 48.

Moreover, the Office Action does not point out where the Shimanaka reference expresses that it would be advantageous or desirable to incorporate the torque converter,

Amendment dated January 20, 2004

Reply to Final Office Action dated November 18, 2003

differential, or the use of a rate of change of wheel velocity in the determination of skid occurrences described by Buschmann. The Office Action asserts that “[i]t would have been obvious to one of ordinary skill at the time of the invention to include an acceleration determination as taught by Buschmann in the controller of Shimanaka et al. for the purpose of controlling the magnitude of slip-control or anti-lock control based on the acceleration values, facilitating a faster reacquisition of traction for the vehicle.” See Office Action at page 4, bottom. Respectfully, Applicants submit that “[t]he level of skill in the art cannot be relied upon to provide the suggestion to combine references” (citing *Al-Site Corp. v. VSI Int’l Inc.*, 174 F.3d 1308 50 USPQ2d 1161 (Fed. Cir. 1999)). See MPEP §2143.01. Accordingly, Applicants respectfully submit that a proper motivation to combine Shimanaka and Buschmann has not been set forth in the final Office Action.

For at least the foregoing reasons, Applicants respectfully submit that independent claims 38 and 48, and dependent claim 40 that depends from claim 38, define patentable subject matter over Shimanaka and Buschmann, alone or in combination. Withdrawal of the rejection applied to claims 38 and 48 under 35 U.S.C. §103(a) as being unpatentable over Shimanaka in view of Buschmann is respectfully requested.

Amendment dated January 20, 2004

Reply to Final Office Action dated November 18, 2003

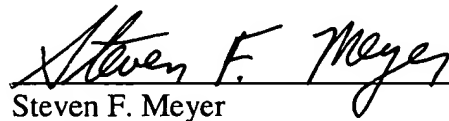
**CONCLUSION**

In light of the foregoing, Applicants submit that all claims, as currently presented, are patentable, and that this application is in condition for allowance.

Respectfully submitted,  
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